* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 19783/2004

DELHI TRANSCO LTD. ..... Petitioner
Through Mr.Jayant Nath, Advocate.

versus

PRESIDENT THE INSTITUTION OF ENGINEERS
..... Respondent
Through Mr.P.Addy, Advocate for Respondent No.1.
Mr.Nitin Aggarwal, Advocate for Respondent No.2.

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN

ORDER

% **03.08.2005**

Learned counsel for Respondent No.1 draws attention to the Arbitration Clause between the parties. The dispute is between the Petitioner and Respondent No.2. Learned counsel for Respondent No.2 states that he has no objection if the Arbitrator appointed by Petitioner is one of the Arbitrators in the Arbitral Tribunal.

The objective behind Clause 30.6 is to ensure that arbitral proceedings are not intentionally protracted. One of the parties to the dispute may, in order to delay proceedings, fail to appoint its Arbitrator. In such an event the clause stipulates that the appointment of the Arbitrator of the defaulting party would vest with Respondent No.1. In the present case, as has already been seen, Respondent No.2 does not oppose the appointment of the nominee of the Petitioner.

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It is always preferable that the Tribunal should be constituted of persons representing the parties. The Petitioner as well as Respondent No.2 jointly state that the costs of Arbitration would be considerably higher if one or more of the Arbitrators are from out of station, since the travelling expenses would ultimately be borne by the parties.

In the circumstances of the case, the Writ Petition is allowed. The appointment of the two Arbitrators nominated by Respondent No.1 is terminated, subject to the parties paying their fees and expenses for the Arbitration proceedings at which Respondent No.2's Arbitrator was present i.e. on 22.11.2004. However, Respondent No.1 shall have the authority to appoint a third Arbitrator who should be from Delhi.

To remove all doubts it is clarified that the Arbitrator appointed by the Petitioner, albeit after the period of sixty days shall be a member of the Arbitral Tribunal along with the Arbitrator already nominated by Respondent No.2. Respondent No.1 shall appoint the third Arbitrator who shall be resident in Delhi.

The Writ Petition stands disposed of in these terms.

VIKRAMAJIT SEN, J

AUGUST 03, 2005
'ac'